

REMARKS

Responsive to the Official Action dated September 30, 2004, the applicant adds new claims 45 through 63. Claim 25 is amended to remove the phrase "such as" in order to remove an objection thereto under 35 USC 112, second paragraph. New independent claim 45 recites the subject matter of now-canceled claim 40, the subject matter of claim 40 having been indicated in the Official Action as being allowable.

The applicant believes that claim 45 recites the subject matter of now-canceled claim 40 and is therefore allowable as are claims 46 through 52 which depend from claim 45.

New independent claim 53 essentially recites the subject matter of original claim 25 absent the phrase "such as" with the limitation of claim 40 added thereto. New claim 53 is therefore believed to be allowable due to the examiner's indication of the allowability of claim 40 and the fact that a combination of the subject matter of claim 40 with the subject matter of claim 25 would be allowable due to the similarities between original claims 25 and 33. Claims 54 through 63 depend from claim 53 and are therefore believed to be allowable.

Allowance of new claims 45 through 63 is respectfully requested.

The applicant believes that claims 25 through 39 and 41 through 44 are allowable as asserted herein for the following reasons.

Claim 25 stands rejected under 35 USC 112, second paragraph, as lacking antecedent basis in lines 10 and 11. The examiner should take notice of line 9 of claim 25 wherein antecedent basis is provided by the recitation of the word "operations" as the tenth word of line 9, thereby providing antecedent basis for the phrase "said operations"

in line 10. Line 11 is amended to make certain that confusion could not exist as to the intent of claim 25. Any and all rejections of claim 25 under 35 USC 112, second paragraph should be withdrawn.

Claims 25 through 39 and 41 through 44 are believed to be clearly allowable over the prior art as applied under 35 USC 102(a) in view of Henderson or 35 USC 103(a) in view of the combination of Henderson and PR Newswire. As is already of record in the prosecution of this application, the two references are news releases issued in 1999 by the applicant. As is clearly stated in the Declaration of Assignee filed on November 3, 2003, the subject matter of claims 25 through 44 was not conceived until June of 2000. The two references are dated in October and November of 1999 respectively and therefore could not be disclosed in the two references.

More importantly, the two references merely refer to results obtained by flight firming methods extant in 1999. Absolutely no disclosure whatsoever exists in the Henderson reference, either solely or in combination with the PR Newswire reference, of the methods and apparatus recited in the claims which now stand rejected. The examiner's contention on pages 3 and 4 of the Official Action are totally inaccurate. As to claim 25, for example, the examiner states that Henderson discloses "access to the database to acquire data for operations therewith". However, claim 25 recites in lines 9 and 10 the step of "coordinating access to the database to acquire data for operation therewith and scheduling said operation". Henderson does not even disclose the step that the examiner indicates much less the step which is recited. As to the examiner's contention that line 24 of page 1 of Henderson discloses the step recited in lines 11 through 13 in one single line, that is, line 24 of page 1 of Henderson is ludicrous. Line 24

of page 1 of Henderson merely mentions a "queue" and makes no mention of the new process of claim 25 as recited in the two steps recited in lines 9 through 13. The examiner is reading infinitely more into the Henderson reference than is contained therein. The examiner uses "hindsight" at the very least in this situation since he had absolutely no way of taking Henderson and coming up with the extensive disclosure provided in the extremely lengthy and complete disclosure provided by the applicant in the present specification.

The comments provided in the preceding paragraph also apply to claim 33. Claims 25 and 33 are clearly allowable. All claims depending from claims 25 and 33 are allowable for the same reasons inter alia provided herein.

The examiner is further referred to the applicant's analysis of the inappropriate use of 35 USC 102(a) in the applicant's response filed relative to the Official Action dated April 10, 2003. The arguments therein provided clearly apply to the claims herein asserted and, for brevity, will not be repeated. This analysis is provided on pages 7 and 8 of the response to the Official Action dated April 10, 2003.

In the event the examiner would prefer a summary of the reasons as to why 35 USC 102(a) is not applicable to the claims herein asserted, the following is provided.

Henderson is dated October, 1999 and the present application has a filing date of September 22, 2000, less than one year after the effective date of Henderson. Therefore, it is not possible to use Henderson against the claims herein asserted since:

- (1) the invention of the claims herein asserted was not known before the invention thereof by applicant;
- (2) Henderson provides only a discussion of flight-firming in a general

manner;

(3) the invention of the claims herein asserted was not used by others anywhere or patented in this or any other country; and,

(4) the invention of the claims herein asserted was not described in a printed publication in this or in a foreign country before the invention thereof by the applicant.

The fact that certain trademarks of the assignee are mentioned in the references is absolutely no indicator that the invention of the claims herein asserted was known in 1999. The same trademarks used to refer to flight-firming methods and apparatus commercialized by the assignee in 1999 and prior thereto continued to be used after conception and reduction to practice of the invention of the claims herein asserted, a common practice in most industries.

For the reasons given herein, allowance of all claims herein asserted is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kenneth E. Darnell". The signature is fluid and cursive, with the first name "Kenneth" and last name "Darnell" clearly distinguishable.

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